IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6840 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KUTCH DISTRICT PANCHAYAT - Petitioner(s)
Versus
UMAR SCALE MAHMAD - Respondent(s)

==========

Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
NONE for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/07/2007

ORAL JUDGMENT

1. The petitioner - Kutch District Panchayat, being aggrieved by the Award dtd.30/4/1998 passed by the Presiding Officer, Labour Court, Bhuj-Kutch in Reference

No.102 of 1996 [Old Reference (SCR) No.242 of 1989], is before this Court with a submission that the Award made by the Labour Court is patently illegal and deserves to be quashed.

2. From the case of the petitioner itself it would appear that Umar Salemahmad - respondent workman was an employee of the State Government, he was appointed in the Health Department (Malaria Department) on 23/10/1982 as Cleaner, a Class IV post. The State Government in January, 1978, found that the services of the respondent and some other were not required, the employees were declared surplus and the State with a view to see they were not rendered jobless, transferred them to the petitioner and appointed them at Mandvi. The respondent was relieved by the District Malaria Officer on 23/2/1978, thereafter on 10/4/1978, the respondent tendered his resignation to the District Malaria Officer, who in his turn, forwarded the same to the petitioner Panchayat with a direction to pass necessary orders. Thereafter, the District Panchayat instead of passing orders on the resignation letter, directed the respondent to make payment of dues and

directed the respondent that unless the dues are cleared off, the resignation would not be accepted. It appears that thereafter, the matter remained in a suspended animation, almost after 10 years, the respondent came to the Labour Court and submitted that he was illegally removed from services, therefore, he was entitled to back wages and reinstatement.

3. The petitioner Panchayat appeared before the Labour Court and submitted that the respondent was never appointed by them, he was not employee of the Panchayat, that the respondent was an employee of the State Government, the Labour Court had no jurisdiction, the Labour Court could not make any inquiry into the relationship between the petitioner and the respondent and that the respondent was not entitled to any relief, as he had approached the Labour Court after a lapse of about ten years.

4. After recording evidence and hearing the parties, the learned Labour Court found it as a fact that relationship of master and servant / employer and employee did exist between the parties, the resignation tendered by the respondent was never accepted by the petitioner, the Court had jurisdiction in the matter and that the workman

was entitled to be reinstated with 20% back wages. Therefore, the Panchayat is now before this Court.

5. Mr.Munshaw, learned counsel for the petitioner has raised certain arguments which i will take in seriatim.

6. Mr.Munshaw, learned counsel for the petitioner submitted that as the respondent was a permanent employee of the State Government, the Labour Court had no jurisdiction and in view of the allegations made by the petitioner, an inquiry into relationship could not be made by the Labour Court. According to him, the respondent should have gone to the Service Tribunal and could not challenge the order before the Labour Court.

7. The argument does not hold water, it is absolutely misconceived. In a given case, if a master raises a defence that there does not exist relationship of master and servant or employer and employee and such defence is to be taken on its face, then it would lead to a chaotic situation. In a case, where one person asserts that there does exist relationship and other denies, then, the Court, before which such pleadings are raised, is required to hold an inquiry and decide the issue. If the Court comes to the conclusion that the relationship does not exist, then it may reject the claim or return the claim to the

party with a direction to approach the appropriate forum. If the court finds that the relationship does exist between the parties, then, it shall proceed with the matter.

8. In the present matter, when the workman had tendered his resignation to the District Malaria Officer, the said officer did not pass any orders, nor accepted the resignation, which would simply mean that according to the District Malaria Officer, the applicant - present respondent workman was not an employee of the Government. He forwarded the resignation with his covering letter to the Panchayat with a direction to take appropriate action. At that time, the petitioner Panchayat could always write back to the Malaria Officer that the respondent not being the employee of the Panchayat, the resignation was not required to be accepted by the Panchayat, they could have asked the District Malaria Officer that as the respondent was a permanent employee of the Government, orders were required to be made by the Government. Instead of doing anything and denying their liability or the relationship of employer and employee, the Panchayat started writing letters to the respondent that in accordance with the rules, unless all the dues which even include a grain advance are not

returned, the resignation would not be accepted by the Panchayat. The texture and tenor of the letter would clearly show that the Panchayat was ready and willing to accept the resignation as a master or employer, if the dues were cleared off. Would this not amount to an admission on the part of the Panchayat that they were ready to accept the resignation of an employee, provided he had cleared of the dues. If yes, then either before the Labour Court or before this Court, the Panchayat would have no foundation to raise a plea that there did not exist any relationship of employer and employee. The total conduct of the Panchayat, right from the beginning, would exhibit that they had accepted the respondent as their employee, they were ready to accept the resignation, in case, the dues were cleared off. They did not accept the resignation and made the acceptance conditional, which would mean that they were ready and willing to exercise powers of an employer.

9. Once it is held, as a fact, that there did exist relationship of employer and employee between the present petitioner and the respondent workman, then, there is no escape from the conclusion that the Labour Court had absolute jurisdiction to decide the matter. If the

Labour Court had the jurisdiction to decide the matter, the respondent was not required to go to the Service Tribunal.

10. It was then contended that the respondent had come to the Court almost after 10 years, therefore, he was not entitled to any relief.

11. In the opinion of this Court, in absence of any limitation fixed under the law, an employee would be entitled to approach the Labour Court at any time. It would, however, be for the Labour Court to take up the matter and decide the same on merits or refuse to exercise its jurisdiction on the ground of laches and delay. In the present case, the Labour Court thought that present was a matter fit for interference and if such was the discretion exercised by the Labour Court, then, High Court, under Article 227 of the Constitution of India, would not be entitled to say that a subordinate court should not have exercised its discretion in a particular manner. Apart from that, it is also to be seen that from the date of the alleged removal or non-grant of the work upto the date of the reference, the Labour Court did not award 100% back wages. The court below had awarded only 20% back wages, which, in the opinion of this Court, cannot be said

to be excessive, specially in view of the false and frivolous defence raised by the present petitioner.

12. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

rafik